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7

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 UNITED STATES OF AMERICA,
11
12 Plaintiff,
13 v.
14 JOSHUA MARTINEZ,
15 Defendant.

Case No. 2:21-cr-00219-APG-DJA

**Stipulation to Continue
Sentencing Hearing
(Third Request)**

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17 IT IS HEREBY STIPULATED AND AGREED, by and between Jason M.
18 Frierson, United States Attorney, and Daniel R. Schiess, Assistant United States
19 Attorney, counsel for the United States of America, and Rene L. Valladares,
20 Federal Public Defender, and Joanne L. Diamond, Assistant Federal Public
21 Defender, counsel for Joshua Martinez, that the Sentencing Hearing currently
22 scheduled on June 11, 2024, be vacated and continued to a date and time
23 convenient to the Court, but no sooner than ninety (90) days.

24 This Stipulation is entered into for the following reasons:
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1 1. On May 9, 2024, the Ninth Circuit issued its opinion in *United States*
2 *v. Duarte*, No.22-50048 (9th Cir. 2024), finding 18 U.S.C. § 922(g)(1)
3 unconstitutional as applied to Duarte. Like Duarte, Mr. Martinez has no violent
4 prior convictions. As such, the Court's opinion calls into question the validity of
5 Mr. Martinez's conviction.

6 2. The government has filed for rehearing in *Duarte*. Whether it will
7 remain good law is uncertain.

8 3. At this stage, defense counsel would be ineffective if she allowed Mr.
9 Martinez to proceed to his sentencing when the constitutionality of his offense of
10 conviction is in flux.

11 4. Mr. Martinez is not in custody and agrees with the need for the
12 continuance.

13 5. The parties agree to the continuance.

14 This is the third request for a continuance of the sentencing hearing.

15 DATED: May 16, 2024.

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18 RENE L. VALLADARES
19 Federal Public Defender

 JASON M. FRIERSON
 United States Attorney

20 By /s/ Joanne L. Diamond
21 JOANNE L. DIAMOND
22 Assistant Federal Public Defender

 By /s/ Daniel R. Schiess
 DANIEL R. SCHIESS
 Assistant United States Attorney

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

6 JOSHUA MARTINEZ,

7 Defendant.
8
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Case No. 2:21-cr-00219-APG-DJA

ORDER

10 IT IS THEREFORE ORDERED that the sentencing hearing currently
11 scheduled for Tuesday, June 11, 2024 at 11:00 a.m., be vacated and continued to
12 _____ at the hour of __:__ .m..

13 DATED this ____ day of May, 2024.
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16 _____
UNITED STATES DISTRICT JUDGE
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